

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DISTRICT

IN RE: § CASE NO. 01-48346-DML

MIRAND HOLDINGS, L.L.C. d/b/a
TIMESPACE, L.C.,

Debtor.

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CHAPTER 7

HARRY L. CURE, TRUSTEE,

Plaintiff,

v.

GREAT-WEST LIFE & ANNUITY
INSURANCE COMPANY,

Defendant.

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ADVERSARY NO. 02-4173

MEMORANDUM OPINION AND ORDER

Before this Court are Defendant's motion to dismiss under Rule 12(b)(6) (the "Motion"), Plaintiff's response to the Motion (the "Response"), Defendant's reply to the Response (the "Reply"), Plaintiff's response to the Reply (the "Supplemental Response", and, together with the Motion, the Response and the Reply, the "Pleadings"), and Defendant's motion to extend time for filing dispositive motions (the "Motion to Extend"). This flurry of paper followed upon the filing of Plaintiff's original complaint (the "Complaint"). The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b)(2)(E) & (O) and 1334(c). This memorandum opinion constitutes the Court's determination of the Motion and the Motion to Extend.

I. Background

Plaintiff is the trustee appointed to administer Debtor's estate in the above-captioned chapter 7 case.¹ Prior to its bankruptcy, Debtor entered into a written contract for group insurance for its employees through Defendant (the "Contract"), which was in effect from approximately May 2000 through May 2001. Under the Contract, Debtor paid a sum certain for each covered employee. In the Complaint Plaintiff alleges that certain of Debtor's employees resigned or were terminated beginning in July 2000, but Debtor continued to pay premiums under the Contract for the terminated employees. By Plaintiff's estimate, Debtor, as a result of this mistake, overpaid Defendant in the amount of \$28,010.00 (the "Overpayment").

Through the Complaint, Plaintiff seeks to recover the Overpayment from Defendant for the benefit of all of Debtor's creditors. While it is not entirely clear from the face of the Complaint on what basis recovery is sought, Plaintiff does recite section 542 in the Complaint and has stated that the Overpayment is recoverable under an equitable restitution theory. Defendant, on the other hand, contends the Contract constitutes an employee welfare benefit plan covered by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., and that, therefore, any claim to the Overpayment pleaded by Plaintiff is preempted.

II. Discussion

By the Motion, Defendant asks this court, pursuant to FED R. CIV. P. 12(b)(6) (made applicable to this proceeding by FED. R. BANKR. P 7012(b)), to dismiss the Complaint for failure to state a claim upon which relief can be granted. In determining whether such relief is appropriate, the court looks to the Fifth Circuit's discussion of Rule 12(b)(6) in *Ramming v.*

¹ Trustee Cure died suddenly last year, and John Litzler has replaced him as trustee in this chapter 7 case and Plaintiff of this adversary proceeding.

United States.² Motions to dismiss for failure to state a claim are appropriate when a defendant attacks the complaint because it fails to state a legally cognizable claim. FED R. CIV. P 12(b)(6). The United States Supreme Court has instructed that “[a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957). *See also Ramming v. United States*, 281 F.3d at 161; *Grisham v. United States*, 103 F.3d 24, 25-26 (5th Cir. 1997).

Subsumed within the rigorous standard of the *Conley* test is the requirement that the plaintiff's complaint be stated with enough clarity to enable a court or an opposing party to determine whether a claim is sufficiently alleged. *Ramming v. United States*, 281 F.3d at 161; *Elliott v. Foufas*, 867 F.2d 877, 880 (5th Cir. 1989). Further, “the plaintiff's complaint is to be construed in a light most favorable to the plaintiff, and the allegations contained therein are to be taken as true.” *Ramming v. United States*, 281 F.3d at 162; *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996). In other words, a motion to dismiss an action for failure to state a claim “admits the facts alleged in the complaint, but challenges plaintiff's rights to relief based upon those facts.” *Ramming v. United States*, 281 F.3d at 162; *Tel-Phonic Servs., Inc. v. TBS Int'l, Inc.*, 975 F.2d 1134, 1137 (5th Cir. 1992). Finally, when considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must examine the complaint to determine whether the allegations could result in relief on any possible theory. *Ramming v. United States*, 281 F.3d at 162; *Cinel v. Connick*, 15 F.3d 1338, 1341 (5th Cir. 1994).

In the Motion, Defendant contends the Complaint fails to state a claim upon which relief can be granted because ERISA preempts any and all *state* law claims. Plaintiff, in the Response, relies on the Fifth Circuit's decision in *Jamail, Inc. v. Carpenters District Council of Houston*

² 281 F.3d 158, 161-62 (5th Cir. 2002), *cert. denied*, *Cloud v. United States*, 2002 U.S. LEXIS 4963 (2002).

*Pension & Welfare Trusts*³ for the proposition that mistaken overpayments of employee benefit premiums may be recoverable through a federal common law restitution claim. In support of the Motion, Defendant then directs the court to the Supreme Court's recent decision in *Great-West Life & Annuity Ins. Co. v. Knudsen*,⁴ stating that *Knudsen* invalidated *Jamail*, and that, therefore, Plaintiff's reliance on *Jamail* was fatal to his case.⁵ After reviewing the cases and the Pleadings, the court is not convinced that *Jamail* is no longer good law or that the facts alleged in the Complaint could not support a claim under *Jamail*.⁶

Further, in the Complaint Plaintiff lists section 542 as one of the bases for this court's jurisdiction over this matter. While it is questionable whether this brief recitation, without further elucidation, could carry the day for Plaintiff, it is a legally cognizable claim, and the court cannot say at this point that Plaintiff is incapable of proving a set of facts that would entitle him to relief thereunder.⁷ Moreover, the court cannot be sure that evidence submitted at trial will not support a claim under another provision of subchapter III of chapter 5 of the Bankruptcy Code or otherwise. In that event, Plaintiff might choose to amend the complaint to conform therewith. See R. BANKR. P. 7015.

³ 954 F.2d 299 (5th Cir. 1992).

⁴ 534 U.S. 204, 122 S. Ct. 708 (2002).

⁵ Indeed, Defendant urged this court to award attorneys fees against Plaintiff because Defendant "was forced to brief and file [the] Reply" While it would certainly have been helpful to this court if Plaintiff had heeded Defendant's entreaties to discuss the niceties of *Knudsen*'s effect on *Jamail*, the court is not convinced the failure to do so rises to the level of a sanctionable offense. Moreover, if *Knudsen* is dispositive of the issues at hand, the court believes Defendant would also be under a duty to the court to cite it as controlling precedent (especially since it appears Defendant was a party to the *Knudsen* litigation). Defendant, however, did not cite *Knudsen* in the Motion.

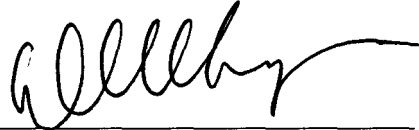
⁶ Cf. *Unum Life Insurance Co. of America v. Long*, 227 F. Supp. 2d 609, 613 (N.D. Tex. 2002) (discussing *Knudsen*, and then citing *Jamail* favorably).

⁷ The court would note, however, that Plaintiff has barely satisfied the requirement that the Complaint "be stated with enough clarity to enable a court or an opposing party to determine whether a claim is sufficiently alleged." See *Ramming v. United States*, 281 F.3d at 161; *Elliott v. Foufas*, 867 F.2d at 880.

III. Conclusion

For the foregoing reasons, the Motion is DENIED. The Motion to Extend is GRANTED insofar as Defendant and Plaintiff shall each have thirty (30) days from the date hereof to file dispositive pleadings with respect to the Complaint.

Signed this 18th day of February 2003.

A handwritten signature in black ink, appearing to read "D. Lynn", written over a horizontal line.

DENNIS MICHAEL LYNN
UNITED STATES BANKRUPTCY JUDGE